IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

MONDAY, THE 17TH DECEMBER 2007 / 26TH AGRAHAYANA 1929

Crl.MC.No. 3606 of 2007()

CRIME NO. 825/07 OF KALAMASSERY POLICE STATION

PETITIONERS/A1 TO 3:

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1. YESUDAS,ITHIPARAMBIL,NJARAKKAL, MANJANAKKAD.

2. SAJIN M.C,S/O.CHAKKUTTI,MEKKATTUKULAM HOUSE,KARIKKADU P.O,KUNNAMKULAM (VIA),THRISSUR DISTRICT,PIN - 680 519.

3. RASHEED K.A,KERANDAKATH HOUSE, CHAVAKKAD - 680 519.

BY ADV. SRI.N.K.MOHANLAL

RESPONDENTS:

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1. SUB INSPECTOR OF POLICE,KALAMASSERY,.

2. STATE OF KERALA REPRESENTED BY PUBLIC PROSECUTOR,HIGH COURT OF KERALA,ERNAKULAM.

3. SREEJITH S,AGED 24,KONAIKAL, KOMANAKKARA,AMBALAPPUZHA.

R3 BY ADV. SRI.C.R.RADHAKRISHNAN

R1 & 2 BY PUBLIC PROSECUTOR SRI. GIKKU JACOB

THIS CRIMINAL MISC. CASE HAVING BEEN FINALLY HEARD ON 3/12/2007, THE COURT ON 17.12.2007 PASSED THE FOLLOWING:

R. BASANT, J.

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Crl.M.C.No. 3606 of 2007

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Dated this the 17th day of December, 2007

O R D E R

What is the correct procedure to be followed by the Investigating Officer when composition of a compoundable offence (with or without permission of the Court - S.320(1) or (2)) is reported to him in the course of investigation? At that stage what relief can be claimed by the accused and the complainant/victim? From which court can such relief be claimed? These questions of day to day relevance before the criminal courts arise for consideration before me in this case.

2. To the vital facts first. Crime No.825 of 2007 of Kalamasserry police station is registered against the three petitioners herein on the basis of the F.I. statement lodged by the defacto complainant/third respondent herein. The crime is registered u/s. 341 and 324 r/w. 34 I.P.C. The offence under section 341 I.P.C. is compoundable under Section 320(1) Cr.P.C. even without the permission of the court, whereas, the offence

under section 324 I.P.C. is compoundable only with the permission of the court under Section 320(2) Cr.P.C. The parties - petitioners and the third respondent - have settled their disputes and the third respondent has compounded the offences allegedly committed by the petitioners.

3. Not sure of the answers to the questions raised in paragraph 1 above, the petitioners along with the third respondent have come to this Court with a petition under Section 482 Cr.P.C. to quash the F.I.R. The jurisdictional competence of this Court under Section 482 Cr.P.C. to grant such relief in an appropriate case if the interests of justice warrant such a course cannot possibly be doubted. The powers under Section 482 Cr.P.C. have often been described to be awesome. The same can in an appropriate case be invoked by this Court to do justice even beyond the law. Such is the sweep, width and amplitude of the extra ordinary inherent jurisdiction under Section 482 Cr.P.C. that the jurisdictional competence cannot be doubted or questioned.

4. But is this a proper case in which such jurisdiction can or ought to be invoked? In every such case, should the parties be

compelled to come to this Court from far and wide to seek such relief under /Section 482 Cr.P.C.? Do they not have a more efficacious and less expensive remedy? These are the vital questions.

5. This court has already held in **Sabu George** v. **Home Secretary** (2007 (1) KLT 982), adopting the line of reasoning in **Mrs. F.M. Torpey** v. **King Emperor** (AIR 1927 Allahabad 375) and **Kumaraswami Chetty** v. **Kuppuswami Chetty** (1918) 41 Mad. 685) that composition of a criminal offence can take place even before the complaint is filed and cognizance is taken by the criminal court. In paragraph 13 of **Sabu George,** after adverting the view that "there can be a composition of the offence prior to a complaint" this Court had said so:

> "I do completely concur with that view. That view does appear to me to be most reasonable. If a different view were taken, pending investigation into a compoundable (320(1) Cr.P.C.) offence which is cognizable and non-bailable, the accused will be forced to endure the trauma of arrest and all the paraphernalia of

> investigation, till a final report is filed in court, whereupon only he will be able to come to Court and seek composition. If the offence is compoundable under S.320 (1) and the parties have compounded the offence, the police must be bound to accept the same and drop further action and make report of the same to the Magistrate concerned. If the police do not, it must be possible for the parties to approach the learned Magistrate or this Court under S.482 Cr.P.C. I therefore agree that composition of an offence under S.320(1) can be effected even before cognizance of the offence is taken by the Magistrate."
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> (emphasis supplied)

6. I have no hesitation to agree that from principle and precedent it has to be held that composition is of the offence and not merely the proceedings pending before the Court. Termination of proceedings is the consequence of the composition and it has to be held that composition is of the offences alleged. Offences are committed even before the complaint/F.I.R. is filed and cognizance is taken only later by a Court. The composition of the offence can therefore certainly take place even prior to the filing of the complaint/F.I.R. and cognizance

being taken by the Court. It can take place at any time after the commission of the offence.

7. Two contentions occur to me in this context. Section 320(2) Cr.P.C. speaks that composition of certain offences can only be with the permission of the Court "before which any prosecution for such offence is pending". It has also to be noted that Section 320(8) Cr.P.C. speaks of acquittal of the "accused".

8. A person becomes an accused not merely when the final report/complaint is filed. The accused is a person who is accused of an offence. In that view of the matter, his status as an accused arises from the point of commission of the offence and thereafter when allegations of commission of crime are raised against him. The expression 'accused' in Section 320(8) Cr.P.C. can hence only refer to the status of the person vis-a-vis the offence and it must be held to have nothing to do with his formal indictment before a Court. It cannot be contended that he becomes an accused only after cognizance is taken and, consequently, that composition can be only after cognizance is

taken by a Court. Such a conclusion cannot obviously be drawn from the use of the expression 'accused' in Section 320(8) Cr.P.C.

9. We now come to the expression 'the court before which any prosecution for such offence is pending'. It is contended that the expression 'prosecution' must refer to a proceedings after taking cognizance and therefore until cognizance is taken "prosecution" has not commenced. Consequently it is contended that the permission contemplated under Section 320(2) Cr.P.C. cannot be obtained from any Court before cognizance of the offence is taken.

10. To understand the words of the Statute, not only the text but also the context must be taken into account. The expression 'prosecution' is not defined in the Code of Criminal Procedure. The State prosecutes the offender. Prosecution etymologically is the process by which the State ensures that an offender is punished. In that sense of the term, the expression 'prosecution', going by language and law, must be the process under which the State, the deemed victim in a crime, undertakes proceedings to ensure punishment of the guilty.

In the context of Section 320 Cr.P.C. such a wider meaning must be assigned to the expression 'prosecution' and it cannot be limited to mean only the process which starts from the formal act of taking of cognizance by the Court. In the sweep of the expression 'prosecution' in the context in which it is used in Section 320(2) Cr.P.C. investigation must be a part. When investigation commences the police reports the matter to the Court and the composite proceedings of “prosecution”, (from investigation, passing through cognizance and final verdict of guilty or acquittal, which must all be held to fall within the sweep) commences. In this view of the matter, it is not necessary to understand the expression 'prosecution' in Section 320(2) Cr.P.C. in any limited sense as to exclude investigation from its purview. The investigation is carried on by the police after lodging the F.I.R. before the court and during the period of such investigation, the 'prosecution' must be held to be pending before such Court. In the context of Section 320(2) Cr.P.C. the expression 'prosecution' must certainly receive such a wider interpretation.

11. If any restricted meaning were to be assigned for the expression 'prosecution', the consequence would be pernicious. The police will be compelled to continue investigation even after the parties have settled the dispute and after the victim has compounded the offence. The investigation will continue unnecessarily to the peril, disadvantage and inconvenience of the accused and leading to unjustified expenditure of public exchequer for such unnecessary investigation. It would defeat the interests of harmony also. As indicated in paragraph 13 of **Sabu George,** it will oblige the accused person to suffer the trauma and tedium of arrest, bail and further proceedings notwithstanding such composition.

12. In these circumstances, I come to the conclusion that the use of the expression 'accused' in Section 320(8) Cr.P.C. and the use of the expression 'prosecution' in Section 320(2) Cr.P.C. cannot lead the court to the conclusion that composition can only be a post cognizance event. My attention has been drawn to two decisions of the Allahabad and Andra Pradesh High Courts reported in **State of U.P.**

v. **Nanhey** (1968 Crl.L.J. 1463) and **Komallaplli Rama Venkata Dandapani** v. **State of A.P**. (2004 (1) ALT 605), which throw some light on this aspect. The reasons given in the judgment of Justice Somayajulu in the decision of the Andra Pradesh High Court do weigh with me better.

13. The mechanics and dynamics of the pre-cognizance composition has to be worked out now. If pending investigation there is composition of an offence under Section 320(1) or 320(2) Cr.P.C., the parties must certainly have the option of either coming to the Court or to the police. I shall first deal with the option to go before the police.

14. A written composition can be filed before the police by the victim - (The person shown in the third column in the table annexed to Section 320 Cr.P.C.). The police must verify the truth, genuineness and voluntariness of the composition. Statement of the victim can be recorded under Section 161 Cr.P.C. If satisfied that there has been a willing, voluntary and genuine composition, which can be accepted

and acted upon, the police can, if the offence is one under Section 320 (1) Cr.P.C. file a negative final report under Section 173 Cr.P.C. to the Magistrate recommending to the Magistrate that the final report may be accepted and further proceedings dropped on the ground that the offence has been compounded. On receipt of such a negative final report under Section 173 Cr.P.C., the learned Magistrate after notice to the defacto complainant, can take appropriate decision in the matter.

15. Where the offence is one falling under Section 320(2) Cr.P.C. the police officer, if he is satisfied that there is willing and voluntary composition, submit a report to the court seeking orders of the Court as to whether leave is granted or not. In that event also notice will have to be ordered by the Court to the victim and appropriate decision taken on the question whether leave under Section 320(2) Cr.P.C. deserves to be granted or not. Appropriate orders shall then be passed by this Court.

16. In both cases depending on the orders of the Court investigation shall be closed or continued by the Investigating Officer.

17. The mere fact that the victim has the option of going before the police to report composition, it does not take away the right of the victim to approach the Magistrate seeking composition of offences falling under Section 320(1) or 320(2) Cr.P.C. In such event, the Magistrate will certainly have to order notice to the Investigating Officer and after hearing him also appropriate decision will have to be taken by the learned Magistrate on the question of accepting the composition as also on the question of grant of leave under Section 320 (2) Cr.P.C. Appropriate orders under Section 320 Cr.P.C. will then have to be passed by the learned Magistrate. If there be more accused or more offences, the police can file interim report to that effect before the Magistrate dropping the proceedings against such accused or in respect of such offence and seek orders of the Court. Even when the offences are compounded and the police think that investigation must continue for other offences or against other accused, investigation can continue, but as against the accused, against whom the offences are compounded and in respect of such compoundable offences,

investigation will have to come to an end after obtaining orders from the Magistrate. Acceptance of the composition in respect of some of the offences or against some of the accused shall not in any way fetter the powers of the police to continue investigation for other offences or against the other accused. The Magistrate can make the position clear in the orders accepting composition.

18. Only when such prayers before the police and the Magistrate do not fructify or bear the requisite results, can a party be granted the option ordinarily to approach the High Court with a petition under Section 482 Cr.P.C. In coming to this conclusion I take note of the width and sweep of the powers under Section 482 Cr.P.C. It is an extra ordinary inherent jurisdiction which, it is trite, is to be invoked sparingly and on exceptional grounds. Such jurisdiction is to be invoked only when compelling reasons are shown to exist and when action is found to be necessary in the interests of justice. What can be achieved ordinarily under the provisions of the Code cannot be sought to be achieved by inviting the court to invoke its jurisdiction under

Section 482 Cr.P.C. It is in this view of the matter that I come to the conclusion that the prayer of the petitioner to quash the proceedings against him on the ground of composition cannot be accepted. It would definitely be a very wrong message if such prayers for composition were to be entertained and allowed by this Court, except where the extra ordinary reasons are shown to exist. No such reasons are shown to exist in this case and therefore I take the view that the petitioner mush approach the police or the learned Magistrate as indicated above to report composition.

19. This Crl.P.C. is accordingly dismissed with the above observations.

20. I place on record my appreciation for the assistance rendered to this Court by Advocates C.P. Udayabhanu and S.Rajiv, who were requested to assist this Court by presenting contrary points of view, if any.

(R. BASANT)
Judge

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